Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1320 of 2001
(Old No. 2116 of 1992)

1. Sukhbeer son of Thani
2. Shaukeena son of Chotan
Both resident of village Tisotara,
P.S. Nagal District: Bijnor.

……Appellants

Versus

State of Uttaranchal …….Opposite party

Shri S.S. Negi, learned Counsel for the Appellant.
Shri Nandan Arya, learned A.G.A. for the State.

Corum : Hon Mr. Justice Irshad Hussain
Hon Mr. Justice Prafulla C. Pant

Per: Hon'ble Prafulla C. Pant, J.

This Criminal Appeal, preferred under Section 374 of Code of Criminal Procedure, 1973, is directed against judgment and order dated 20.11.1992, passed by the then learned Sessions Judge, Haridwar, in Sessions Trial No. 52 of 1990, whereby appellants Sukhbeer and Shaunkeena have been convicted under Section 302 read with Section 34 of Indian Penal Code, 1860, (herein after for brevity I.P.C.) and each of them sentenced to life imprisonment.

2. In brief, prosecution story is that Rajbala (deceased), a member of Schedule Caste, was wife of one Om Pal who is by caste a jaat. He is brother of Tejpal Singh (P.W. 1-informant). Appellant Sukhbeer is real

brother of the deceased who got annoyed with Om Pal Singh for keeping his sister as his wife. Om Pal used to work in a pertrol pump where he was employed and lived with Rajbala in the house of Mehant Ratan Giri. Dharmendra Kumar (P.W. 2) S/o Tejpal Singh (P.W. 1) also used to live in the same house. On 10.09.1996, Tejpal Singh (P.W. 1) had come from village Tisotara, District Bijnor to meet his brother Om Pal Singh. He along with Om Pal Singh and Dharmendra at about 1:30 P.M. took their meals which was prepared by Rajbala. Thereafter Om Pal Singh and Dharmendra went out in connection of their duties. At 3:30 P.M. Sukhbeer, Shaukeena (both appellants) and Raju (co-accused acquitted by the trial court) came to the house of Om Pal and started chatting with Rajbala. Tejpal Singh (P.W. 1) took it as the brother and sister are talking to each other. Thereafter, he went to tubewell to fetch water in a bucket and when he came back, he heard shrieks of Rajbala and saw Sukhbeer, Shaukeena and Raju, armed with blood stained knives, running out of the house. They had committed murder of Rajbala with the help of knives. All the three accused after commission of crime, ran towards road and were also witnessed by Jaipal (P.W.3). On this, Tejpal and Jaipal made attempts to chase the culprits and on the way Dharmendra (P.W. 2) also met them and accompanied them but the accused persons succeeded in fleeing in a rickshaw. Tejpal and Dharmendra immediately came back in the house of Om Pal and found Rajbala lying dead in a pool of blood. First Information Report (Exh. A-1) was lodged by Tejpal Singh (P.W. 1) with the help of Dharmendra on the very day i.e. on 10.09.1986 at about 16:45 P.M. Head constable Gajendra Singh (P.W. 5), prepared a check

report (Exh. A-6) on the basis of F.I.R. and made an entry in a General Diary (copy Exh. A-7) at serial No. 34. A crime No. 173 of 1986 was registered with the Police Station Khankhal, District- Haridwar, against all the three accused, Sukhbeer, Shaukeena and Raju under Section 302 of the I.P.C. and investigation was started by Sub-Inspector, Ram Kumar Singh (P.W. 8), who proceeded to the place of occurrence and prepared the Site Plan (Exh. A- 10). The dead body of Rajbala was taken into possession by the Investigating Officer who got prepared the Inquest Report (Exh. A-11), diagram of the dead body (Exh. A-12), Police form No. 13 (Exh. A-13), letter (Exh. A-14) to the Chief Medical Officer for autopsy and sample seal (Exh. A-16). Police also took into possession the blood stained clothers (Exh. 1 and 2), blood stained 'BAAN' (Exh. 3) of cot the prepared memo (Exh. A-2). The police also collected broken bangles (Exh. 4) and blood stained buttons (Exh. 5) from the place of occurrence and prepared memo (Exh. A-3). The Investigating Officer recorded the statements of witnesses and handed over the dead body of constable Chaman Lal (P.W. 9) and constable Raghubeer Singh in a sealed cover for being takne for post mortem examination.

3. Dr. A.K. Jain (P.W. 6), performed the autopsy on the dead body of Rajbala, on 12.09.1986 at about 2:00 P.M., which was brought to him by the aforesaid two constables. The Medical Officer, after examining the dead body, prepared post-mortem report (Exh. A-8) in which he observed that the dead body was of a 35 years old women of average built. Rigour mortis had passed off all over the body. Early decomposition was present.

Following ante-mortem injuries were recorded by the aforesaid Medical Officer:-

1. **Incised wound 7cm x 1 ½ cm x soft tissue deep dividing muscle and vessels on right side neck 3cm above middle 1/3 of right clonicle transverse in direction tailing towards chin.**
2. **Incised wound 2cm x 1cm x muscle deep left side of neck, 4cm below left ear transverse tailing towards chin.**
3. **Incised wound 1cm x .5 cm x muscle deep transverse tailing towards chin, 1cm below injury no. 2.**
4. **Incised wound 2 ½ cm x .5cm x muscle deep transverse tailing towards chin 1cm below injury No. 3.**
5. **Incised wound 4cm x 2cm x cavity deep oblique tailing downward on right side chest 3cm medial from right nipple at 5'^{o} clock position directed downward backward laterally.**
6. **Incised wound 4cm x 1cm x muscle deep left side abdomen**

oblique above umblicius at 2'^{o} clock position tailing upward.

7. **Incised wound 4cm x 1cm x muscle deep transverse tailing 16cm below left nipple.**

On lateral examination, the Medical Officer found right side carotid vessels cut. As to brain, it was observed that liquification of brain had started. Sixth rib was also found cut. Heart was place and it's both chambers were empty. In the stomach, semi-digested food was present. In the intestines, digested food with gases were found present. Uterus was empty. Bladder was empty. In the opinion of the Medical Officer, who conducted the post-mortem examination, cause of death was shock and haemorrahge due to ante-mortem injuries.

4. The Investigating Officer, after completing the investigation, submitted the chargesheet against all the three accused Sukhbeer, Shaukeena (both appellants) and Raju before the concerned Magistrate who after giving the necessary copies to the accused persons, committed the case to the Court of Sessions. Learned Sessions Judge, after hearing the parties, on 21.05.1990 framed charge under Section 302 read with Section 34 of I.PC. against all the three accused persons to which they pleaded not guilty and claimed to be tried. The prosecution got examined P.W. 1 Tejpal Singh (informant), P.W. 2 Dharmendra (S/o Tejpal Singh), P.W. 3 Jaipal (declared hostile), P.W. 4 Shyam Singh (rickshaw puller-declared hostile), P.W. 5 Head Constable Gajendra Singh, P.W. 6 Dr. A.K. Jain, P.W. 7 Sub-Inspector Hari Prakash, P.W. 8 Sub- Inspector Ram

Kumar Singh (first Investigating Officer) and P.W. 9 Constable- Chaman Lal. The oral evidence, documentary evidence and material exhibits were put to the accused persons under Section 313 of Code of Criminal Procedure, 1973, to which they alleged to be false. No evidence was given in defence. Learned Sessions Judge, Haridwar, after hearing the parties, found that the prosecution failed to prove charge beyond reasonable doubt, against the accused Raju and acquitted him of the charge while appellants, Sukhbeer and Shaukeena were found guilty of the offence charged against them and were convicted under Section 302/34 I.P.C. After hearing them on punishment, they were sentenced to life imprisonment. Aggrieved by said judgment and order dated 20.11.1992, this appeal has been preferred by appellants Sukhbeer and Shaukeena.

5. We heard learned Counsel for the parties at length and perused the entire evidence on record.

6. P.W. 1 Tejpal Singh has stated on oath, before the trial court that appellant Sukhbeer (a member of schedule caste) was annoyed with his sister Rajbala (deceased) as she used to live as wife with Om Pal who was a jaat by caste. This witness has further stated that on the date of incident, he came to see his brother at about 11:00 A.M. and had food with his son Dharmendra (P.W. 2) and brother Om Pal, after Rajbala (deceased) prepared their meals. P.W. 1 Tejpal Singh further states that at about 1:45 P.M., Om Pal and Dharmendra left for their duties. Thereafter at about 3:00 P.M., appellants Sukhbeer and Shaukeena, along with Raju came there and started chatting with Rajbala. Meanwhile, Tejpal Singh (P.W. 1) went to tubewell to fetch water. When he came back, at

the door, he heard the cries of Rajbala and saw appellants Sukhbeer and Shaukeena along with Raju, all the three armed with blood stained knives running towards the west. This witness says that Jaipal (P.W. 3) also witnessed the incident and on the way when he was chasing the accused persons, Dharmendra (P.W. 2) also met him. He further says that the accused persons fled away after boarding a rickshaw.

7. P.W. 3 Jaipal, however, has denied having seen appellants Sukhbeer, Shaukeena or Raju, committing the crime or that they were seen running from the house of Om Pal. Rather this witness says that he had not gone to the house of Om Pal. This witness was got declared hostile by the prosecution as he did not support the prosecution story. P.W. 4 Syam Singh, a rickshaw puller says that he knows appellants Sukhbeer and Shaukeena as well as Raju but he says he never saw them running, after committing the crime. He denines that on the day of the incident, they boarded his rickshaw. Rather he says that he was at the railway station on that day. This witness too got declared hostile as he did not support the prosecution story.

8. As such not the only ocular evidence to be examined is that of P.W. 2 Dharmendra (S/o Tejpal Singh). Though he has supported the prosecution story as against appellants Sukhbeer and Shaukeena but not against Raju who has already been given benefit of doubt by the learned trial court on that ground. It is clear from the evidence on record that this witness Dharmendra (P.W. 2) is son of Tejpal Singh (P.W. 1). Therefore, it is all the more necessary to scrutinize the evidence closely.

This Court cannot close its eyes to the statement of P.W. 1 Tejpal Singh that Om Pal and Dharmendra left the house at 1:45 P.M. as they had to join their duties. P.W. 2 Dharmendra himself says he was on duty from Jwalapur bridge to Shankracharya Chowk, Haridwar. It is strange that when the accused persons were running from the scene, it is only Dharmendra who met his father P.W. 1 Tejpal Singh when he was chasing the culprits. The incident of chasing is a broad day light incident. As such the prosecution story to the extent that P.W. 2 Dharmendra witnessed the appellants running from the scene of occurrence in village Ratan Baag, Mohalla Krishna Nagar, at the time of duty elsewhere appears to be doubtful. That being so, the statement of P.W. 1 Tejpal Singh remains un-corroborated regarding the commission of murder by the appellants.

9. As such this Court has to see if sole testimony of Tejpal Singh who is resident of a different place, can be treated sufficient to prove the charge framed against the appellants. As per the prosecution story, appellant Sukhbeer is the brother of the deceased. Unless there is strong motive brought on the record, it is hard to believe why a brother would kill his own sister. Merely for the reason that she was wedded to Om Pal, it cannot give rise to the motive from commission of crime against a woman that too aged 35 years. It has no where come in the evidence on record that she (the deceased) was recently married to Om Pal. Not only this, as far as appellant Shaukeena is concerned he is a muslim. There is nothing on the record which suggests any motive on his part as agasnt the deceased. Though the motive is not essential for prove the charge but in such circumstances, where sole testimony of all eye-witness is to be examined,

motive in a particular case may assume significance, particularly in view of the fact that even the witness P.W. 1 Tejpal Singh has no natural domicile of District-Haridwar rather he admittedly belongs to District Bijnor. And he says that only on the day of the incident, he had come to the house of Om Pal. It is therefore, not safe to rely on his sole testimony in the circumstances of the case.

10. Apart from the above reasons, also, there is nothing on the record to prove the prior meeting of minds of appellants regarding the commission of murder of Rajbala. Mere on the basis of presumptions and surmises, charge under Section 302 read with 34 of I.P.C. cannot be said to be proved against the appellants. In the above circumstances, we are of the view that the charge under Section 302/34 of the I.P.C. stands not proved beyond reasonable doubt against the appellants.

11. In view of above discussions, but the appellants are entitled to the benefit of doubt as the charge doesn't stand proved against either of them beyond reasonable doubt. Therefore, the appeal deserves to be allowed. Accordingly, the appeal is allowed. The impugned judgment and order dated 20.11.1992, passed by the then learned Sessions Judge, Haridwar in S.T. No. 52 of 1990 is set aside. Both the appellants are acquitted of the charge under Section 302/34 of I.P.C. They are on bail, they need not to surrender.

(Prafulla C. Pant, J.) **(Irshad Hussain, J.)**

Dt. 26th April, 2005
Sweta